THE HON'BLE SRI JUSTICE GODA RAGHURAM

TUESDAY, THE 15TH DAY OF NOVEMBER, 2005

W.P.No. 9111 of 2005

Between:-

G. Sathaiah

--Petitioner

And

The Assistant Commissioner of Labour (Central), Jyothinagar Colony, NTPC (MNCL), Ramagundam, Karimnagar district and two others.

--Respondents

Oral order:- (W.P.No. 9111 of 2005)

Petitioner claims to have been appointed initially as a temporary General Mazdoor in the stores section of Singareni Collieries Company Limited (for short 'Collieries') and to have been transferred thereafter to the Mines in 1984. He worked as a General Mazdoor (Surface) since 1984 and thereafter was promoted as a Coal Filler in 1986; that the promotion as Coal Filler was cancelled and orders were issued again appointing the petitioner as General Mazdoor Category-I. He also claims that from 1987 he was continuously working as General Mazdoor (Surface) and the respondents-Collieries were engaging him on surface duties at Lamp Room and utilizing his services only as a Lamp Room Mazdoor on Category-I Wages. He categorically asserts that no allowances are paid to the petitioner General Mazdoor (Surface) till the filing of writ petition. The petitioner also states that though he worked in January and February, 2005 on surface, the 3rd respondent has shown in the pay slip that he worked 'under ground'.

According to the petitioner, he is a member of the Singareni Collieries Employees' Union, Mandamarri. On his complaint, the Union had taken up the issue regarding regularization of his services and an application was filed before the 1st respondent-The Assistant Commissioner of Labour (Central), Jyothinagar Colony, Ramagundam on 28-02-2005 for conciliation. The grievance was admitted for conciliation on 11-03-2005. After admission of the conciliation proceedings, the petitioner contends, the 3rd respondent declined permission to him to discharge his duties as General Mazdoor (Surface). Petitioner also asserts that as per the agreement arrived at between the Union and the Management, employees having

more than 45 years of age are allowed to work only on 'surface' and should not be sent 'under ground'. The petitioner also states that he filed a complaint under Section 33-A of the Industrial Disputes Act, 1947 (for short 'the Act') on 31-03-2005 and the 1st respondent issued notices to the 2nd and 3rd respondents, but these respondents did not respond to the notices.

In brief, the petitioner's grievance appears to be two fold: (a) Without a deployment order, the petitioner, who was working throughout since 1987 onwards as Mazdoor on 'Surface' has been denied permission to work as Mazdoor (Surface) by the 3rd respondent and without any order or deploying him to work 'under ground'; and (b) that having been appointed as a General Mazdoor (Surface) and in view of the pendency of the conciliation proceedings admitted on 11-03-2005 before the 1st respondent, the petitioner cannot be deployed to work 'under ground' as such a deployment would constitute alteration of the conditions of his service during the pendency of the conciliation proceedings. It is only these two issues urged that require resolution in this writ petition.

The 3rd respondent has filed a counter affidavit. According to the 3rd respondent, the writ petition is not maintainable, since the petitioner being a workman has an effective alternative remedy under the provisions of the Act. It is alternatively contended that the petitioner was initially a Badli Worker; was thereafter appointed as a Coal Filler and thereafter joined as a General Mazdoor and is liable to work wherever he is deployed to perform the functions of a General Mazdoor. It is also categorically asserted, an assertion not denied by the petitioner, that there is nothing like a General Mazdoor (Surface) or a General Mazdoor (under ground) in the service hierarchy of the Collieries. All Mazdoors are obligated to work wherever they are posted. As the mere posting of a General Mazdoor from Surface to Under ground or vice-versa does not constitute alteration of the conditions of service, the pendency of the conciliation proceedings before the 1st respondent does not disable the 3rd respondent to post the petitioner from Surface to Under ground or immunize the petitioner from being deployed from Surface to Under ground, is the meat of the respondents' defence on this aspect. It is contended, in this context by the 3rd respondent, that a General Mazdoor may be working on the Surface or Under ground as per administrative exigencies; and if they are required to work under ground in such exigencies, they are entitled to 'under ground allowance, which is

not admissible if a General Mazdoor is posted to work on the 'surface'. The pay slips show the lable 'surface' or 'under ground' only with a view to facilitate the credit of 'under ground' allowance to those Mazdoors who are deployed to work 'under ground'; and the lable 'surface' or 'under ground' in the pay slip is not an indication of distinct categories of 'surface' and 'under-ground' General Mazdoors.

Sri Nandigam Krishna Rao, learned standing counsel for the Collieries has placed before this court today, the proceedings of the 3rd respondent – The Superintendent of Mines, SRP-I Incline, Singareni Collieries Co., Ltd., Srirampur Area, Mancherial dated 10-11-2005 instructing the petitioner to discharge the duties of General Mazdoor (Under ground) with effect from 10-11-2005. This is an order by which the petitioner is deployed to work 'under ground'. In the absence of any pleading explicit, compelling or implied; and in the light of the order of the 3rd respondent dated 10-11-2005, the inference is imperative that prior to 10-11-2005, the petitioner was employed to work as General Mazdoor on 'surface'.

The petitioner's specific averment that despite employment as a General Mazdoor on 'surface' duty since 1987, he was not permitted to perform the functions of his office since 14-03-2005 after the admission of the conciliation proceedings by the 1st respondent on 11-03-2005, has not been denied or rebutted in the counter affidavit. An adverse inference has, therefore, to be drawn that the petitioner has not been permitted to function as General Mazdoor on 'surface' duties and without a deployment order 'under ground' by the 3rd respondent. The petitioner is accordingly entitled to wages for the period 14-03-2005 till the order of the 3rd respondent dated 10-11-2005.

Learned counsel for the petitioner Mr. A.K. Jaya Prakash Rao contends that Rule 77 and 77-A of the Mines Rules, 1955 (for short 'the Rules') ordain that every person employed in the mine should be issued a metal token bearing a number and other particulars; and no person employed in a mine shall enter or be permitted to enter for work in any part of a mine unless he carries on his person the token issued to him. On the basis of this Rule, and an assertion that people deployed to work 'under ground' are issued with a lamp, helmet and other accessories relevant to the safety requirements of 'under ground' work, it is contended on behalf of the petitioner that there is clear distinction between 'surface Mazdoor' and 'under ground Mazdoor'. Such distinctions are defacto distinctions depending upon the place to which a

Mazdoor is deployed to perform the functions. These distinctions, in the considered view of this court, do not constitute Mazdoors into several and distinct categories 'surface' and 'under ground'. The petitioner claims that Surface Mazdoor is a distinct category in the service of the Collieries, as against 'Under ground Mazdoor'. Learned standing counsel disputes the same. Therefore, the burden is upon the petitioner to substantiate his claim as to the existence of distinct categories of General Mazdoor (Surface) and (under ground). This burden the petitioner has miserably failed to establish. Faced with this predicament, Sri A.K. Jaya Prakash , learned counsel for the petitioner, would place reliance on Rule 2 of the Rules.

Rule 2 of the Rules states that a person working or employed in or in connection with a mine is said to be working or employed;

a. 'below ground' if he is working or employed ---

ii. in a shaft which has been or is in the course of being sunk; or

i. in any excavation which extends below superjacent ground and

(b) 'above ground' if he is working in an open cast working or in any other manner not specified in clause (a).

Even this provision of the Rules merely defines the expressions 'below ground' and 'above ground'. This Rule does not lend sustenance to the petitioner's contention that there are two categories of service in General Mazdoor – "Surface" and "Under Ground". The provisions of Rule 2 of the Rules do not militate against the claim and contention of the Collieries that the same composite category of General Mazdoor could be deployed for Surface and Under ground duties according to the exigencies of administration. Given this right of the employer-Collieries to deploy a General Mazdoor to Surface or Under ground duties in the exigency of service, Rule 2 and the other Rules (referred to above) require that those deputed to work under ground are obligated to be provided the requisite paraphernalia as mandated in the Rules that ensure safety of those employed under ground. Nothing more can be inferred from this legislative/statutory regime.

On the above analysis, in view of the order of the 3rd respondent dated 10-11-2005 the conclusion is inescapable that the petitioner is obligated to work under ground

on and from the date of the 3rd respondent's proceedings dated 10-11-2005.

In the result, the substantive claim of the writ petitioner that he is immune from being deployed to under ground duties is rejected. The petitioner having not disassociated himself from working on the surface duties to which he was posted prior to 10-11-2005 shall be paid salaries and allowances as a General Mazdoor, if not already paid, as he was drawing in the said post, up to 10-11-2005. On and from the said date, the petitioner shall be liable to work in accordance with the proceedings of the 3rd respondent dated 10-11-2005. If the petitioner has any grievance about his being deployed underground, pursuant to the 3rd respondent's proceedings dated 10-11-2005, he is at liberty to make a representation to the employer, which may then be considered in accordance with the plenitude of the employer's discretion and the exigency of administration, which aspect this court is not inclined to determine.

The writ petition is disposed of as above. However, there shall be no order as to costs.

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GODA RAGHURAM, J

Dated: 15-11-2005

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